

REMARKS/ARGUMENTS

The Applicants have carefully considered this application in connection with the Examiner's Final Action and respectfully request reconsideration of this Application in view of the foregoing amendments and following remarks.

The Applicants originally submitted Claims 1-20 in the Application. In the present response, the Applicants amend Claims 1, 4, 8, 11, and 15. The Applicants cancel dependent Claims 2, 9 and 16 without prejudice or disclaimer, and incorporate elements of these claims, and elements of dependent Claims 4 and 11 into the various independent claims. Accordingly, Claims 1, 3-8, 10-15 and 17-20 are currently pending in the Application.

I. Rejection of Claims 1-20 under 35 U.S.C. § 103

The Examiner has rejected Claims 1-3, 7-10 and 14 under 35 U.S.C. § 103(a) over U.S. Patent Application No. 2002/0073084 to Kauffman, *et al.* ("Kauffman") in view of U.S. Patent Application No. 2003/0229893 to Sgaraglino ("Sgaraglino"); Claims 4 and 11 are rejected under 35 U.S.C. § 103(a) over Kauffman and Sgaraglino, in further view of U.S. Patent No. 6,256,554 to DiLorenzo ("DiLorenzo"); Claims 5 and 12 are rejected under 35 U.S.C. § 103(a) over Kauffman and Sgaraglino, in further view of U.S. Patent No. 6,144,944 to Kurtzman, II *et al.* ("Kurtzman"); Claims 6 and 13 are rejected under 35 U.S.C. § 103(a) over Kauffman and Sgaraglino, in further view of U.S. Patent Application No. 2001/0044855 to Vermeire, *et al.* ("Vermeire"); Claims 15-17 are rejected under 35 U.S.C. § 103(a) over Kauffman and Sgaraglino, in further view of U.S. Patent Application No. 2002/0046279 to Chung ("Chung"); and Claims 18, 19 and 20 on the same basis as Claims 4, 5 and 6, respectively, in combination with Chung. The Applicants respectfully overcome

the rejections, because the cited combinations fail to teach or suggest each and every element of the respective claims as currently amended.

Amended independent Claim 1 is directed towards a media and advertisement distribution and tracking system for use with a computer network. Claim 1 comprises remote players configured to store media for playback according to corresponding playback rules, *wherein the playback rules define a stored and selected subset of playable media at the remote player for playback by an end user*. The remote players store advertisements for playback according to corresponding advertising schedules, and store information corresponding to playback of the media and advertisements in as-run logs. *At least one as-run log correlates to an aggregate behavior of a plurality of end users*. Claim 1 further comprises a media server that distributes the media to the remote players via the computer network according to the corresponding playback rules, *wherein the media server adjusts the playback rules based on the as-run logs. The playback rules govern: a) which media is loaded into which remote players; and b) when the media is loaded on the remote players. The playback rules further include an aspect of media playback history of the plurality of end users for at least one of the remote players*. Claim 1 further comprises an advertisement server that distributes the advertisements to the remote players via the computer network according to the corresponding advertising schedules; and a tracking subsystem that retrieves the as-run logs from the remote players via the computer network and generates media and advertisement play reports and advertisement billing reports therefrom. (Emphasis added.)

As discussed in previous Amendments, Kauffman teaches a networked multimedia distribution system that provides the ability to insert advertisements into the playback stream

multimedia file destined for an end-user. (See Abstract.) Components of this system include a local point-of-presence (POP) 32 and a residential gateway device, such as a television 12 and a computer terminal 16. (See ¶ 17; Fig. 1.) The POP 32 comprises a caching inserter 30 that provides functionality to insert an advertisement into the playback stream. (See ¶ 18.) Furthermore, Kauffman teaches a billing system 42 that may be configured collect information on the identity of the various advertisements inserted into the playback stream, and various history parameters related to their playback, from the caching inserter 30.

The Examiner asserts that Kauffman discloses “a media server that distributes said media to said remote players via said computer network.” (See Examiner's Action, page 3.) The Applicants respectfully contend that Kauffman does not disclose or suggest Claim 1 as amended, that of a media server that distributes the media to the remote players via the computer network *according to the corresponding playback rules, wherein the media server adjusts the playback rules based on the as-run logs, wherein the adjustment of the playback rules govern: a) an adjustment of the rules of which media is loaded into which remote players, and b) an adjustment of the rules of when the media is loaded on the remote players, wherein the playback rules further include an aspect of media playback history of a plurality of end users for at least one of the remote players.*

Instead, Kauffman is directed to inserting advertisements into a streaming media at arbitrary locations along the stream. (See ¶1.) Kauffman defines a pre-stored selectable set of playable media. In Kaufmann, however, no adjusting of playback rules takes place. Although insertion of advertisements occurs by a rule server 40 (See ¶18.), no *adjustments of playback rules* occurs in Kauffman.

In Kauffman,

It is an advantage of a particular arrangement of the present invention that the requirement of passing an advertisement stream through a cache allows for various statistics to be collected at the POP, such as the number of times a particular ad is played, the number of end users that viewed the ad, the time of day and day of week the ad was played, etc. Such information can then be collected by a billing system and used to derive price information for use with the advertisement suppliers. (See ¶10.)

However, the above does not disclose or suggest adjusting playback rules. Playback rules are generally defined in the present Specification as rules that govern how the media is distributed to the various remote players. Also, please note that in the present Specification, "media" is explicitly defined as not including advertisements. (See Specification, ¶27.).

Therefore, an insertion of advertisements by Kauffman simply does not disclose or suggest playback rules, which define a stored and subset of playable media. (See Specification, ¶35.) Although Kauffman may insert advertisements and collect statistics, Kauffman does not disclose or suggest *adjusting* how *media* is distributed to various remote players.

The Examiner also asserts that Kauffman does not specifically teach that media is stored according to playback rules, that the player itself stores playback information in as-run logs, and that advertisement billing reports are generated." (See Examiner's Action, page 3.)

However, the Examiner contends that: "Sgaraglino teaches the logging of information such that advertisement billing reports may be obtained. (0060)." (See Examiner's Action, page 3.) The Examiner further contends that: "Noll teaches that the media is propagated and stored based on user preferences, which constitutes playback rules (Abstract, 0078). It would have been obvious to one of ordinary skill in the art ... to include that the media is distributed in a rule based fashion..." (See

Examiner's Action, page 3.)

The Applicants respectfully contend that the Examiner has glossed over claimed aspects of rule-based behavior, both in the prior claim and as presently amended.

First, the Applicants again respectfully note that "media" is explicitly defined not to include advertisements."

Abstract of Noll states as follows:

A system and method (the "Channel Dancer") of delivering broadband content that has been personalized for a recipient user is disclosed. By excelling in the personalization of the user's view of broadband content on the Internet and otherwise, the system and method develop "stickiness" with the user that maximizes the benefits and effectiveness of advertising and related activities. The system preferably comprises a network operations center ("NOC") that receives and packages content, with promotional materials, on virtual channels, a transmission medium that transmits the virtual channels, a broadband ISP with a point-of-presence ("POP") server that receives the virtual channels and routs virtual channels to a user machine, based on requests received from client software (the "client") resident on the user machine and filtering performed by the client based on a personal profile of the user. (Abstract)

¶78 of Noll states:

[0078] Each user machine 18 that receives virtual channels 124 from the POP client server 80 preferably hosts a client 20, as described above. The client 20 is preferably a software package that incorporates Internet browser and media player (e.g., MS IE and Media Player) technologies in order to provide flexibility in personalized selection and presentation of the multidimensional media content 122 available from the virtual channels 124. *The client 20 preferably continually scans the control channel (described above), which preferably delivers scheduling and classification information on programming carried by the virtual channels 124 available to the client 20. The client 20 preferably enables each individual user (e.g., family members) on a single user machine 19 to fill out a personal profile describing personal interests in content 122 as well as GUI theme (skin) preference.* (Emphasis added.)

Although Noll may employ virtual channels to deliver broadband content, Noll does not disclose or suggest *adjusting* playback rules (i.e., adjusting how *media* is distributed to various

remote players), wherein the playback rules define a *stored and selected subset* of playable media at the remote player for playback, as claimed in amended Claim 1. Instead, generally, in Noll, virtual channels are simply presented to the end user, and the end user selects from these virtual channels, and advertising is then personalized for the end user and are associated with virtual channel preferences. However, no adjusting of playback rules occurs in Noll; there is no disclosure or teaching within Noll that the virtual channels are not presented to the end user regardless.

Moreover, in Claim 1, there is a *stored and selected subset* of playable media at the remote player. Noll does not have playback; instead, content of Noll is received over virtual channels. Furthermore, Noll does not store a selected subset of playable media, Noll instead just receives overall general, overall broadband content through virtual channels. Nor is there a disclosure or suggestion within Noll of adjusting of playback rules of which media is loaded into which players, or when the media is loaded.

Furthermore, Noll is directed to the user selecting from virtual channels, and generating data for using with advertising. However, Noll is directed to the *personal* or individualized interests of a client, not in the aggregate behavior of a plurality of users for a remote player, as claimed in Claim 1 as amended. In other words, unlike Noll, the behavior of individual end user is not of interest to the invention of Claim 1; only the behavior of an aggregate of end users. One of ordinary skill in the art would not be motivated to employ a reference that discloses "stickiness" for virtual channels for individual clients to govern instead the overall playback rules for a given remote player. Therefore, the Applicants respectfully contend that there is a teaching away within Noll from Claim 1 as amended.

The combination of Kauffman, Sgaraglino and Noll, as applied by the Examiner, fails to teach these elements. Furthermore, the Applicants do not find any suggestion of the limitation within the references or the knowledge of one of ordinary skill in the art. Because the combination does not teach or suggest each and every element of the Claim, the *prima facie* case of obviousness fails, and the Claim is allowable. Independent Claim 8 is nonobvious and allowable by analogous argument.

Independent Claim 15 also includes the recited elements. The Examiner cites McFaddin for the proposition that McFaddin teaches: "the propagation of advertisements in a media distribution system according to a corresponding advertising schedule. (Abstract, 0032.)" (*See Examiner's Action*, page 3.) The Examiner cites Chung for teaching a skin server storing and delivering skins. (*See Examiner's Action*, page 8.) But the Applicants find no teaching or suggestion within McFaddin or Chung that cures the deficiency of the combination of Kauffman, Sgaraglino and Noll. Therefore, the cited combination fails to teach or suggest each and every element of Claim 15, and the claim is allowable.

The Examiner rejects Claims 4, 5, 6, 11, 12, and 13 over the combination of Kauffman and Sgaraglino in further view of DiLorenzo, Kurtzman, or Vermeire, and Claims 16-20 over the combination of Kauffman, Sgaraglino and Chung in further view of DiLorenzo, Kurtzman, or Vermeire, as recited above. Each of DiLorenzo, Kurtzman, and Vermeire, as applied by the Examiner, fails to cure the deficiency of the combination of references with which each is combined. The Applicants further find no suggestion within these references of the limitation recited above. Thus, the *prima facie* case of obviousness of Claims 4, 5, 6, 11, 12, 13, and 16-20 fails.

Accordingly, Claims 1, 3-8, 10-15 and 17-20 are allowable over the cited references as applied by the Examiner. The Applicants therefore respectfully request that the Examiner withdraw the rejection of Claims 1-20 under 35 U.S.C. § 103.


II. Conclusion

In view of the foregoing amendment and remarks, the Applicants now see all of the Claims currently pending in this Application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1, 3-8, 10-15 and 17-20.

It is not believed that any fees are due regarding this matter; however, the Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 08-2395.

The Applicants request the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present Application.

Respectfully submitted,
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